Forest Service

Bitterroot National Forest

1801 N. First
Hamilton, MT 59840
406 363-7100

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To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Gary Macfarlane, on behalf of Friends of the Clearwater, Alliance for the Wild Rockies, and The Lands Council, of the Little Slate Record of Decision (ROD) signed by Nez Perce National Forest Supervisor Rick Brazell.

The Forest Supervisor's decision to implement Alternative B2 includes timber harvest and fuel reduction treatments on 2,598 acres, 49 miles of road decommissioning, 15 miles of road reconstruction, 63 miles of road improvement, 12 miles of temporary road construction, 100 to 150 acres of soil restoration, 0.73 miles of riparian restoration, 75 acres of gully stabilization, complete in-stream channel rehabilitation at 13 sites, treating 59 road and 73 trail stream crossings, expansion of an existing rock quarry, 6 miles of trail relocation, 32 miles of trail reconstruction, 4 miles of trail decommissioning, adding 1.2 miles of non-system trail to the trail system, decommissioning 2.7 miles of non-system trails, and instituting travel restriction on selected system roads and trails.

My review was conducted pursuant to, and in accordance with, 36 CFR 215.19 to ensure the analysis and decision are in compliance with applicable laws, regulations, policies, and orders. The appeal record, including the appellant's objections and recommended changes, has been thoroughly reviewed. Although I may not have listed each specific issue, I have considered all the issues raised in the appeal and believe they are adequately addressed below.

The appellant alleges violations of the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Clean Water Act (CWA), and the Endangered Species Act (ESA). The appellant requests the Regional Forester rescind the Little Slate decision. If the decision is not rescinded, he requests: 1) all restoration activities occur before the road building and logging occurs; 2) road building and logging in the unroaded areas be dropped; 3) all areas of high erosion hazard be dropped; 4) no temporary roads be built in high erosion hazard areas; 5) restrictions to winter logging be reinstated; 6) monitoring data be collected in key fish habitats that demonstrate an upward trend is occurring before the project is implemented; and 7) no logging occur in stands that meet old growth definitions. An informal meeting was held but no resolution of the issues was reached.

ISSUE REVIEW

ISSUE 1: The FEIS and ROD fail to meet NEPA, NFMA, ESA, and CWA regarding fishery habitat, water quality, and soils.

Issue 1, Contention A: The appellant alleges the Little Slate Project's subwatersheds are part of the larger Slate Creek watershed and that cumulative impacts to the overarching Slate Creek Watershed have been sidestepped by drawing an arbitrary boundary between Slate Creek and Little Slate Creek. Projects in other subwatersheds within the Slate Creek Watershed have received recent entry and treatment. The Clean Slate ROD approved timber sales in the Slate Creek drainage that were ongoing at the time the analysis for the Little Slate project was underway. He alleges the impacts to the entire Slate Creek drainage must, therefore, be considered, in compliance with NEPA.

Response: The ROD and FEIS defined the cumulative effects area as the Little Slate watershed. The documents provided the rationale for selecting the cumulative effects boundary, including the assumption that project effects would be localized and are not anticipated to be discernible downstream in lower Little Slate Creek (ROD, Appendix A, pp. 62 to 64). The FEIS (pp. 78 and 83) states that effects would be diluted to an immeasurable level if they were assessed at an area larger than the Little Slate watershed. If the effects are not discernible at the Little Slate watershed level, they would not cumulatively be discernible at the larger Slate Creek watershed level. Increasing the analysis to a larger area would "dilute the effects to an immeasurable level, a concern raised by the CEQ." The cumulative effects boundary for the Little Slate project was therefore appropriate.

I find the cumulative effects boundary was appropriately defined for the watershed and fisheries analyses, and they are in compliance with NEPA.

Issue 1, Contention B: The appellant alleges the FEIS fails to show how the modeled sediment projections from the Clean Slate logging and restoration comport with reality. He alleges the monitoring has not taken place to adequately validate the assumptions in the adjacent Clean Slate project, in violation of NEPA and NFMA.

Response: There is no requirement for the Little Slate project to report on the projected sediment from the Clean Slate project. The Clean Slate project lies outside of the Little Slate project and cumulative effect boundaries. Whether or not monitoring was required to validate the assumptions in the Clean Slate Project area, no monitoring to validate the NEZSED model predictions was proposed for the Little Slate project (ROD, pp.11). The Little Slate analysis and project are in compliance with NEPA and NFMA.

Issue 1, Contention C: The appellant alleges NEZSED does not model grazing impacts—an important issue in this area—nor does it model mass wasting events. He also alleges livestock grazing is not adequately analyzed. There is no mention of trespass cattle and how livestock have affected the current habitat conditions for watershed and fisheries, in violation of NEPA.

Response: The project record clearly indicates that the NEZSED model was not designed to model grazing or mass wasting events and using the model for these activities is inappropriate

(PF, Doc. 09db-0009, p. 21). The FEIS analysis acknowledges the effects from grazing in relation to the existing watershed conditions (ROD, Appendix A, pp. 26, 28, 70 to 72; FEIS, pp. 71, 83). Grazing effects were specifically analyzed by each of the four grazing allotments in the Fisheries cumulative effects section (FEIS, pp. 89 to 90). The effects were considered to be minor and documented accordingly. The FEIS also indicates that BMPs were implemented to reduce grazing effects to streams in the allotments (FEIS, pp. 89 to 90, 175, 271). The soils scientist evaluated the presence of potential mass wasting areas using methodologies other than NEZSED. The analysis indicates a very small portion of the analysis area has moderate to high mass wasting potential (FEIS, pp. 60, 67). The ROD (pp. 8, 61) and FEIS (pp. 31, 59 to 61, 167) clearly state that timber harvest on these areas would be avoided as part of the project design features.

I find the analysis is in compliance with NEPA. The analyses appropriately and adequately considered the effects of grazing and mass wasting on watershed and fisheries conditions in the Little Slate project area.

Issue 1, Contention D: The appellant alleges the FEIS fails to analyze the actual operational mining impacts in terms of water quality and fishery impacts from a cumulative perspective, in violation of NEPA.

Response: The FEIS (pp. 69 to 71, 78 to 80) does consider the cumulative effects to water quality from mining. The watershed analysis points out that the impact from mining is sediment. The fisheries analysis discusses impacts to the fisheries from sediment in its cumulative effects analysis (FEIS, pp. 87 to 92). The Forest considered the cumulative effects of mining in the Little Slate project. The analysis is in compliance with NEPA.

Issue 1, Contention E: The appellant alleges the FEIS does not analyze the point source sediment from the proposed actions. The issue of obtaining an NPDES (or more than one) as per the Browne decision is ignored in the FEIS, in violation of CWA and NEPA.

Response: Under the NEDC v. Browne decision (2010), the 9th Circuit Court considered storm water runoff from logging roads collected by a system of ditches and culverts and discharged into streams to be a discharge of pollutants from a point source subject to permitting requirements of the Clean Water Act's National Pollutant Discharge Elimination System (NPDES). The Forest Service was not a party in this lawsuit and is not currently bound by this decision; however, if required at the time of project implementation, permits would be obtained.

The Little Slate analysis acknowledged that the excess sediment in streams is largely due to the presence of roads (FEIS, p. 71). The analysis for sediment yield included all harvest and road related activities (FEIS, p. 76). The analysis shows that implementation of the Little Slate project would, over the long term, reduce road related sediment through road decommissioning, road reconstruction, and road improvement activities (ROD, pp. 3, 4, 6, 7, 12 to 15, 17, 18, 32; FEIS, pp. 21, 22, 32, 77, 170, 228 to 232).

I find the analysis complies with NEPA and CWA. It appropriately and adequately considers the effects of road related activities and the responsible official would obtain NPDES permits if they are required at the time of project implementation.

Issue 1, Contention F: The appellant alleges the projection in the FEIS (p. 87) that RHCAs would prevent sediment from reaching streams is odd and inconsistent, in violation of NEPA. For example, the FEIS watershed section (pp. 76 to 81) contradicts the fisheries section (p. 87). The FEIS fishery portion also does not analyze the impacts of 12 miles of new road on sediment production, in violation of NEPA.

Response: The discussion of the watershed analysis (FEIS, pp. 76 to 77) combined the direct and indirect effects of the project, while the fisheries analysis (FEIS, pp. 87) discusses the direct effects separately from the indirect effects. The confusion lies in trying to compare the slightly different combination of effects. The appellant incorrectly compares the direct effect to the indirect effects of sediment in making his contention. To clarify, the FEIS states there would be no *direct* effects of deposited sediment from timber harvest activities, including temporary road construction, due to the retention of RHCAs. No timber harvest or road building activities would occur within the RHCAs; therefore, direct effects would not occur (ROD, Appendix A, p. 63; FEIS, pp. 86, 87). The analysis did, however, acknowledge that there would be short term *indirect* sediment increases to streams as modeled by NEZSED (FEIS, pp. 87; PF, Doc. 09ca_0021, pp. 9, 10). If sediment makes its way to streams it does so after harvest activities and road use. This is considered an indirect effect, not a direct effect, because it is separated from the action in time and space. Since the watershed and fisheries analyses use the same model information and both show similar indirect effects to streams, they are consistent with each other.

The fisheries section analyzed the impacts of the 12 miles of new temporary road on sediment production. The roads were modeled in NEZSED and the effects were presented in the watershed section of the FEIS (pp. 76). The NEZSED model results were then used to assess the effects to fisheries resources. A short term, temporary increase in sediment was acknowledged (FEIS, pp. 87; PF, Doc. 09ca_0021, pp. 10, and Doc.09ce-0026, pp.1 to 5). In using the NEZSED data, temporary roads were included in the fisheries indirect effects analysis. All action alternatives decrease sediment over the long term due to road/trail decommissioning and road/trail improvement activities (ROD, pp. 4, 15, 17; FEIS, pp. 22, 35, 73 to 77, 80, 88, 89, 167, and 178). I find the Forest properly and adequately analyzed the effects on sediment production and is in compliance with NEPA.

ISSUE 2: The FEIS, ROD, and project files fail to show or demonstrate an upward trend.

Issue 2, Contentions A, B, and C: The appellant alleges logging cannot occur unless there is a positive upward trend in drainages not meeting Forest Plan standards as required by Appendix A of the Forest Plan. The Slate Creek EAWS and Little Slate FEIS states existing conditions are below Forest Plan requirements (FEIS, p. 85). The Forest Plan notes "timber management activities can occur in these drainages, concurrent with habitat improvement efforts, as long as habitat capacity shows a positive, upward trend." See Nez

Perce FP, Appendix A, p. A-7, footnote 2. While the FEIS claims the data "suggest" parameters have improved, the project files do not show anything that specific.

The appellant alleges that the project file shows no upward trend. Most data are from the 1990s. The data from 2007 are either parameters not germane to the issue or are only information from the certain sections of the mainstem Little Slate Creek on cobble embeddedness. The majority of the analysis area is without recent data. Thus, no trend can be established for those parameters that are below Forest Plan standards. The FEIS tries to promise a future upward trend rather than showing an upward trend is occurring, as required by the Forest Plan. Temperature, sediment, cobble embeddedness, and other standards are not being met.

The appellant lastly alleges monitoring information as required by the Forest Plan also does not show an upward trend. The latest monitoring report that is available (FY2004) notes "at this point, results of the monitoring are not available." These are violation of NFMA.

Response: Appendix A of the Forest Plan provides fishery/water quality objectives by prescription watershed. For each prescription watershed, the following objectives are provided: 1) a fishery water quality objective (rated as percent habitat potential); 2) a maximum sediment yield to meet the fishery water quality objective (modeled using NEZSED); and 3) the number of entries allowed in the prescription watershed per decade. Appendix O of the Forest Plan provides guidance on what parameters could be measured to assess the fishery habitat potential portion of the objectives for Forest Plan monitoring, one of which is cobble embeddedness (Forest Plan, Appendix O, p. O-7).

The appellant is correct in stating "timber management activities can occur in these drainages, concurrent with habitat improvement efforts, as long as a positive, upward trend in habitat carrying capacity is indicated." This guidance was applied to the Little Slate prescription watersheds since they do not meet their assigned fish/water quality objectives related to habitat potential (FEIS, p. 85; Appendix A, p. A-2). The FEIS (p. 85) states sediment is the most predominant factor affecting Forest Plan objectives. All prescription watersheds in the Little Slate project meet their Appendix A modeled sediment yield guidelines both before and after project activities (FEIS, pp. 70, 76).

The FEIS states that water quality has improved. This is based on cobble embeddedness data collected in 1994/95 and again in 2007 (FEIS, pp. 85, 169). A comparison of the data indicates there was a decrease in embeddedness in four of the six prescription watersheds assessed (PF, Doc. 09ce_0019). This information indicates an upward trend using site specific data. In addition, the *Care and Feeding of Appendix A* guidance document (PF, Doc. 05-0005, p. 7) states "if any watershed restoration has been implemented, or if a change in management (i.e. grazing or roads management) has resulted in fewer potential adverse effects to streams, an upward trend could be assumed" (p.10). Past road improvement and decommissioning activities (FEIS, p. 272) and adjustments to grazing allotments (FEIS, pp. 89 to 90) have occurred in the Little Slate project area. Therefore an assumption of an upward trend is appropriate. To further support this, the 2004 Forest Plan Monitoring Report (p. 41) states the "watershed condition has likely

improved gradually in most watersheds over the last decade, because of marked reductions in road construction and logging, and reductions of mining and grazing impacts." The project complies with Appendix A guidance in that it proposes important watershed restoration activities which will reduce sediment input to streams and allow for a continued upward trend in aquatic conditions (ROD, pp. 6, 15, 17; FEIS, pp. 12, 30).

The Forest Plan requires monitoring of Little Slate Creek (Forest Plan, Appendix O, p. O-8). The streams listed in the Forest Plan are "considered 'representative' with gathered information being extrapolated to similar streams on the Forest" (p. O-7). Monitoring of Little Slate Creek is done at existing gaging station lower in the drainage. However, upward trend monitoring occurs at the prescription watershed level, not the larger Little Slate Creek level. As previously mentioned, data on cobble embeddedness was collected at the prescription watershed level and shows an upward trend.

The appellant cites the 2004 Forest Plan Monitoring Report with regards to Forest Plan monitoring requirements. However, no page number was provided in the appeal, and the exact quote in the appeal could not be found in a search of the report. What was found in the report (p. 31) regarding fisheries monitoring was this question: "What practices need to be changed based on monitoring results?" Followed with the Forest response: "There are no monitoring results available at this time that identify the need to make large-scale changes in practices on the forest." It appears that the appellant misconstrued the statement in his appeal. I find the Forest appropriately and adequately assessed upward trend requirements. The project is in compliance with the Forest Plan guidance found in Appendix A and NFMA.

Issue 2, Contention D: The appellant alleges that modeled recovery cannot be a surrogate for actual data because upward trend is based on real data, not speculation. The NEZSED and WATBAL models used by the agency underestimate sediment, which is admitted in the FEIS.

Response: The Forest Plan requires the use of the NEZSED model to assess the difference between alternatives related to timber harvest activities during project NEPA analysis (Appendix A, p. A-7; PF, Doc. 05-0005). Forest Plan direction requires the assessment of upward trend through the collection of field-based data (Appendix O, p. O-7).

The FEIS acknowledges and clearly describes the uses and limitations of the NEZSED model (FEIS, p. 75). The model cannot predict actual in-stream conditions and the model's primary utility is in comparing difference between proposed alternatives. The NEZSED model was used to compare the difference between alternatives in the FEIS (p. 68; PF, Doc. 05-0005, p. 27). It was used to predict sediment yields between alternatives as suggested in the *Care and Feeding of Appendix A* document (PF, Doc. 05-0005). It is not designed, and was not used, to predict actual in-stream conditions (FEIS, p. 75). Instead cobble embeddedness data (PF, Doc. 09ce_0019) was used to determine whether or not an upward trend was occurring in the prescription watersheds. This data showed a decrease of imbeddedness at all measured stations and therefore an upward trend.

The determination of upward trend and the use of NEZSED were appropriately done. I find the project and analysis are in compliance with the Forest Plan and NEPA.

Issue 2, Contention E: The appellant alleges that for logging to occur, the Forest Plan requires the agency show an upward trend. An area that is below standard must show recovery before logging can occur. The FEIS demonstrates (for one year) rather than an upward trend, the trend is downward. This is a major failing of the FEIS because of the way sediment and pollutants are modeled. Figure 1 portrays the sediment from this timber sale all in one year, making it look more like a pulse event. The Forest Service's own FY 2011 Watershed Restoration Action Plan for the upper Little Slate drainage emphasizes the protracted nature of logging, projecting it to last 12 years.

Response: The appellant incorrectly interprets the Forest Plan requirement for recovery prior to logging. The Forest Plan does not require that water quality objectives be met (recovery) prior to conducting timber harvest activities, only that an upward trend be indicated. The Forest Plan gives no time factor for achieving fish/water quality objectives (PF, Doc. 05-0005, p. 8). Logging can occur in the Little Slate drainage as long as it is concurrent with habitat improvement efforts (ROD, p. 25; FEIS, pp. 12, 30). Habitat improvement projects are included in the selected alternative.

The *Care and Feeding of Appendix A* document (PF, Doc. 05-0005, pp. 11) states, "With all habitat components except sediment, the improving trend should be continuously upward, with no temporary downturns or reduction in the rate of improvement." For sediment, slight increases are allowed as long as there is a long term decline in sediment production, thereby enhancing the existing improving trend (p. 13). This was included in the direction so as to allow for watershed restoration projects such as road decommissioning and culvert replacements. These projects typically add small amounts of sediment to streams, but create long term reductions in sediment (FEIS, pp. 76, 87). As stated in the previous contention, the NEZSED model is not designed, and was not used, to predict actual in-stream conditions or recovery. It is only used to compare alternatives. The FEIS (pp. 80, 81) modeled sediment yield over 10 years and concludes that expected effects would be less than those modeled because the activities would be spread out over time. Alternative B2 remains below the Forest Plan guidelines for sediment yield for all prescription watersheds (FEIS, p. 76).

The analysis for upward trend was determined correctly and is in compliance with both the Forest Plan and NEPA.

Issue 2, Contention F: The appellant alleges that by the time sediment reduction would actually show a positive trend, assuming the restoration indeed works, another "entry" will be made in the watershed. The timing of the Clean Slate and Little Slate projects in the Slate Creek watershed is contrary to meeting the Forest Plan water quality standards. As such, the logging activities as proposed in the Little Slate ROD cannot proceed.

Response: The Forest Plan allows only a certain number of entries in each prescription watershed over a 10 year period (Appendix A, p. A-7). The *Care and Feeding of Appendix A* provides the information necessary to determine what comprises an entry. There have been no entries into the project's prescription watersheds in the last 10 years (FEIS, Table 3-8, p. 70).

The appellant makes unfounded assumptions about future entries. The only future foreseeable timber harvest entry proposed for the Little Slate project area is a 480-acre whitebark pine restoration project, which would occur between 2011 and 2015 (FEIS, p. 275). The FEIS (p. 277) also shows two ongoing sales, but no future foreseeable sales in the entire Slate Creek drainage. There is no information that suggests any other entries would occur within the area in the foreseeable future.

Forest Plan water quality standards apply only to prescription watersheds (Forest Plan, Appendix A). The Clean Slate and Little Slate projects are not in the same prescription watersheds (Forest Plan, Appendix A, pp. A-2). There are six prescription watersheds within the Little Slate Project area and 20 within the entire Slate Creek area (Appendix A, pp. A-2). The Clean Slate and Little Slate projects are not connected in relation to Forest Plan Appendix A entry timing. Timber harvest can proceed in the Little Slate watersheds.

I find the Forest appropriately assessed watershed entries and water quality objectives. The project is in compliance with the Forest Plan.

Issue 2, Contention G: The appellant alleges two documents referenced in the FEIS, *The Care and Feeding of Appendix A – Review Draft-Nez Perce National Forest* (Gerhardt, Nick, September 1991) and *The Implementation Guide to Appendix A of the Nez Perce National Forest Plan* (Conroy and Thompson, 2011), cannot replace Appendix A without a Forest Plan amendment. To do so without an amendment is a violation of NFMA.

Response: Forest Plan Appendix A describes water quality standards and objectives, by watershed. The *Care and Feeding of Appendix A* does not change these standards or objectives. Rather, it provides information regarding how to assess compliance with the Appendix A standards.

The FEIS (pp. 69 and 75) clarifies that Conroy and Thompson (2011) is a guidance document, including the methodology, for the use of the NEZSED model, which generates sediment data to predict potential changes used for analysis. It does not replace or amend Appendix A.

Forest Plan amendments are needed to add, modify, or rescind one or more of the decisions made in a Forest Plan. *The Care and Feed of Appendix A* and *The Implementation Guide to Appendix A of the Nez Perce National Forest Plan* do not add, modify, or rescind one or more of the decisions made in the Nez Perce Forest Plan. No changes to water quality standards are proposed with this project. There is no need to amend the Forest Plan.

The project is in compliance with the Forest Plan and the use of *The Care and Feed of Appendix A* and *The Implementation Guide to Appendix A of the Nez Perce National Forest Plan* is in compliance with NFMA.

ISSUE 3: The appellant alleges the Slate Creek Ecosystem Analysis at the Watershed Scale (EWAS) has not gone through the NEPA analysis.

Response: As discussed in the FEIS (p. 164, Response to Comment #15) the current Nez Perce Forest Plan is a broad programmatic document that provides overall guidance for management of the forest. Forest desired future conditions (Forest Plan, pp. II-1 to II-13), goals, objectives, and standards are written in general terms. The use of non-NEPA documents to aid in the determination of site specific needs is a legal, accepted, standard practice in the NEPA process. They are neither process guiding or decision documents but serve only to aid in the analysis. When used as such, they are noted and incorporated by reference (40 CFR 1502.21).

The use of the Slate Creek Ecosystem Analysis at the Watershed Scale (EWAS) to assist in the analysis of the Little Slate project is appropriate. The project was tiered to the Nez Perce Forest Plan and used non-NEPA documents correctly, in compliance with NEPA and NFMA.

ISSUE 4: Narrow Purpose and Need Constraining the Alternatives

Issue 4, Contention A: The appellant alleges the alternatives were purposely excluded or constrained and the justification given is an overly narrow (and inconsistent) purpose and need, in violation of NEPA.

Response: The Little Slate project originally considered nine alternatives. Five were considered in detail, while four were not. A discussion of these alternatives and the rationale for detailed consideration is provided in the ROD (pp. 18 to 31) and the FEIS (pp. 12 to 39). The Purpose and Need for the project (EIS, pp. 1 to 2) is not overly narrow or inconsistent. The Purpose and Need and the range of alternatives is in compliance with NEPA.

Issue 4, Contention B: The appellant alleges logging was pre-determined and alternatives that did not include logging were dismissed without consideration, in violation of NEPA. The appellant offers appeal Attachment 1 as proof for this allegation.

Response: In reviewing the documentation, I find Appeal Attachment 1 is a February 17, 1998, letter regarding road construction in unroaded areas of the Middle Fork Timber Sale. In this contention the appellant appears to be referring to Attachment 2, which is entitled *USDA Forest Service Watershed Condition Framework—FY2011 Transition Watershed Restoration Action Plan*. The Action Plan is a watershed restoration planning tool. Since it is not a decision document, anything in the Action Plan was still open to change at the time it was issued. Given that the Action Plan is dated October 27, 2011, three months after the Draft EIS was issued, it is likely this planning tool is based on the Preferred Alternative (DEIS, p. 34). It is important to

note the Action Plan was issued after the DEIS presented to the public which alternatives would be analyzed in detail (DEIS, pp. 14 to 30) and which were considered, but would not be analyzed in detail (DEIS, pp. 30 to 34). The Action Plan was appropriately developed from the NEPA documents in existence at the time. If the ROD had decided on an alternative different from the Preferred Alternative (which ***was*** the case, since Alternative B2 was chosen), the Action Plan could easily be changed to fit the situation.

The Little Slate project originally considered nine alternatives. Five were considered in detail, while four *were considered*, but not analyzed in detail. A discussion of these alternatives and the rationale for detailed consideration is provided in the ROD (pp. 18 to 32) and the FEIS (pp. 12 to 39). The majority of the Little Slate project lies in Management Area (MA) 12 of the Nez Perce Forest Plan. This MA prioritizes timber production on a sustained yield basis. Alternatives that include logging follow the direction of the Forest Plan.

The Forest did take a "hard look" at alternatives for the Little Slate project, including the No Action Alternative. Timber harvest was not a pre-determined action. The analysis and decision are in compliance with NEPA.

ISSUE 5: The appellant alleges the Slate Creek project lacks an adequate cumulative assessment of impacts in the area, in violation of NEPA.

Response: Cumulative effect discussions and analyses are documented throughout the Little Slate Project Record and NEPA documents. Cumulative effects are discussed for each of the alternatives in Chapter 3 of the FEIS. Cumulative effects for the proposed action are disclosed for vegetation, rare plants, fuels, air quality, soils, hydrology, fisheries, wildlife, recreation, minerals, cultural resources, and tribal treaty rights. The Slate Creek EIS and project file documents adequately assess cumulative impacts on a comprehensive scale, in compliance with NEPA.

ISSUE 6: The Forest Service is engaging in inaccurate roadless/wilderness evaluations regarding the impacts to roadless areas, in spite of clear case law and agency policy.

Issue 6, Contentions A and C: The appellant alleges the project did not evaluate the impacts the project would have on the contiguous Gospel Hump Wilderness, and the unroaded areas of Boulder Creek and Little Rubie, in violation of NEPA.

Response: It is clear the Little Slate Project proposes no activities in the Gospel Hump Wilderness. The Little Slate Project proposes no harvest or road building activities in Idaho Roadless areas.

As discussed in the FEIS (pp. 179 to 180, Response to Comments 76 and 77) The Idaho Roadless Rule took effect in 2008 and supersedes RARE I, II, and the 2001 Roadless Conservation Rule. The Idaho Roadless Rule designated 250 Roadless areas in Idaho, including the Little Slate Creek and John Day Roadless Areas, which are shown in the Alternative B2 Map

(FEIS, Map A-12). No logging or temporary road building will occur in either of these designated areas, or in the Gospel Hump Wilderness, as a result of the Little Slate ROD.

Contiguous unroaded areas adjacent to these designated Roadless Areas and the Gospel Hump Wilderness includes Boulder Creek and Little-Rubie unroaded areas. These unroaded areas are not included in the Idaho Roadless Rule. As noted in the FEIS (p. 139), both areas are classified as Management Area 12 under the Nez Perce Forest Plan (Plan, pp. III-37 to III-38). Forest Plan direction for these areas includes: Manage for timber production and other multiple uses; manage for roaded natural recreation; and construct and reconstruct roads primarily to achieve timber management objectives.

The potential effects to the Gospel Hump Wilderness, the Idaho Roadless Areas, and unroaded areas are analyzed and described in the recreation section of the FEIS (pp. 138 to 143). The FEIS determined there were no effects to the wilderness characteristics for the Gospel Hump Wilderness based on the fact the project proposes no activities adjacent to or within the Wilderness (FEIS, p. 138). The FEIS (pp. 142 to 143) states, "Effects to unroaded lands are also very minimal...would have no long term effects and not change the wilderness characteristics long term." Short term effects are discuss including sounds associated with harvest and visual impacts from harvest until harvest units re-establish and blend into the existing background.

The effects of the project on wilderness characteristics are in compliance with existing Forest Service Policy, Forest Plan, Idaho Roadless Rule, and NEPA.

Issue 6, Contention B: The appellant alleges the FEIS claims proposed logging and road building is not an impact to the roadless nature of the area. Past experience has shown that regardless of what the agency claimed would be the impacts to the roadless nature/ wilderness potential of the area when the environmental analysis was done, after the logging was completed, the agency eliminated the entire area from the roadless base because it no longer met the definition of roadless.

Response: Timber harvest and temporary road would only occur in small portions of the unroaded areas in MA12, but no timber related activities would occur in Idaho Roadless Areas or Wilderness. The Forest analyzed the unroaded areas and concluded that proposed activities were minimal and short term in nature. Temporary roads would be obliterated and harvest units would regenerate over time; therefore, there is no long term effect to the wilderness characteristics. The RO Roadless Rule Process paper (PF, Doc. 09ib-0015; and NOA Attach. #3) states, "...harvest areas may be included as roadless if the logging and prior road construction are not evident." The Forest Plan (FP, pp. III-37 to III-38) standards and goals for MA12 allows for timber harvest and road construction. The project is in compliance with the Forest Plan.

Issue 6, Contention D: The Ninth Circuit notes that the decision to harvest timber on a previously undeveloped tract of land is "an irreversible and irretrievable decision" which could have "serious environmental consequences." This is a clear statement that logging a roadless area negatively affects the areas potential for wilderness.

Response: As I have discussed above, the Forest evaluated and disclosed the effects of timber harvest activities within the Little Rubie and Boulder Creek unroaded areas. The ROD (p. 20) summarized the effects and states the project activities would not affect the future potential for wilderness consideration. The project and analysis are in compliance with the Forest Plan and NEPA.

ISSUE 7. Wildlife

Issue 7, Contention A: There is no reliable trend data for fisher or pine marten. Rather habitat data was substituted on a larger scale. The lack of information violates NEPA and NFMA. The monitoring report provides no indication of population trends of these MIS.

Response: The Forest Plan (pp. V-6 and V-7, Table V-1) lists Forest Plan Monitoring Requirements. Item 10, population trends of indicator species - wildlife and fish, are to be reported every 3 to 5 years. These monitoring requirements are set at the Forest level and not the project level. The Forest Plan Monitoring Report for 2004 (the most recent available) indicates the population trends for both fisher and pine marten are stable (p. 29).

The ROD, FEIS, DEIS, and project file contain habitat data and reports at the regional and project level. The ROD, FEIS, DEIS, and project file demonstrated the analysis is in compliance with NFMA and NEPA.

Issue 7, Contention B: The appellant alleges the statement in the FEIS that no analysis for lynx is needed is in error. The FEIS and ROD fail to acknowledge the fact that the FWS has been successfully sued in its identification of lynx habitat and that case law supports a more thorough and liberal interpretation of lynx habitat. The latest Nez Perce National Forest Plan Monitoring Report (FY 2003 and 2004) notes that "many forest management activities in designated lynx habitats are now governed and guided by the conservation measures in the Lynx Conservation Assessment and Strategy" (LCAS). However, the project file notes that nothing for lynx need to be done on the Nez Perce National Forest. This contradiction shows the agency has failed to meet NEPA, NFMA, and ESA requirements for these species.

Response: The U.S. Fish and Wildlife Service (FWS) revised lynx critical habitat with the February 25, 2009, publication in the Federal Register of the final rule (Fed Reg., Vol. 74, No. 36, pp. 8616 to 8702). No critical habitat for lynx was designated on the Nez Perce National Forest. The FWS has declared the Nez Perce National Forest is only secondary habitat and the National Forest is not occupied by lynx (USFWS Semi-annual species list 14420-2010-SL-0088 12/30/2009; PF, Doc. 09ma-0001, Wildlife Specialist Report, p. 35; and Northern Rockies Lynx Amendment 2007 ROD, pp. 7, 29; ROD Attachment 1, p. 1; FEIS Summary, pp. 4 to 6; FEIS Background, pp. 3 to 5). There is no requirement under ESA to analyze the impact a project would have on a listed species or on critical habitat when that species or habitat is not in the vicinity of the project. The project is in compliance with ESA.

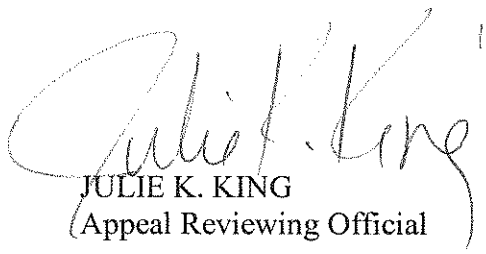
The Northern Rockies Lynx Amendment 2007 amended standards and guidelines into the Nez Perce Forest Plan. With that amendment the Forest was no longer required to consider the LCAS in project planning. Instead, they were to follow the Forest Plan. The wildlife biologist analyzed whether the project would comply with the lynx guidance in the Forest Plan (PF, Doc. 09md-0016). The analysis shows the existing condition (Table 5) and the results of the action alternatives (Table 9) would be in compliance the Nez Perce Forest Plan as amended by the Northern Rockies Lynx Management Direction. This analysis is supported by the data contained in the project file (Docs. 09md-0017 to 0022, 0025, and 0026). The analysis and project are in compliance with NEPA and NFMA.

ISSUE 8: The appellant alleges the FEIS claims that no old growth would be affected. However, the old growth maps in the project files seem to overlap logging units. Thus, the analysis in the FEIS is confusing and/or contradictory when it claims no old growth would be logged under the selected alternative.

Response: Maps can sometimes be difficult to read, particularly when there are many harvest units and many old growth units to check. However, it is clear from the FEIS, ROD, and extensive project file documentation dedicated to the old growth analysis (PF, Docs. 09ma-0033 to 0079) that the intent of Alternative B2 is to avoid harvesting any old growth. The selected alternative (B2) does not harvest in MA 20 or any old growth habitat, including replacement old growth. This is repeatedly stated in the ROD (pp. 14, 17, 19, 23, and 61) and FEIS (pp. 164 and 174 to 175) and displayed in the Alternative B2 Map (FEIS, Map A-16). The selected alternative (Alternative B2) will maintain at least 10 percent old growth in old growth analysis unit as required by the Forest Plan. The project and analysis are in compliance with NEPA, the Forest Plan, and NFMA.

RECOMMENDATION

I have reviewed the record for each of the contentions addressed above and have found the analysis and decision adequately address the issues raised by the appellant. I recommend the Forest Supervisor's decision be affirmed and the appellant's requested relief be denied.



JULIE K. KING
Appeal Reviewing Official

cc: Rick Brazell, Ralph E Rau, Tammy Harding, Norma Staaf, Ray G Smith, Cynthia Lane